North Smithfield Zoning Board of Review January 25, 2011 7:00 p.m.
Primrose Fire Station
1470 Providence Pike, North Smithfield

Mr. Scarpelli called the meeting to order at 7:02 pm.

1. Roll Call

Present: Steven Scarpelli, Stephen Kearns, Bill Juhr, Guy Denizard, Mario DiNunzio, Paul Pasquariello, and Scott Martin. Also present were Building Official Bob Benoit, Assistant Town Solicitor Bill Savastano, and a court stenographer from Allied Court Reporters.

- 2. Disclosure of no compensation or pension credits received by the board members.
- 3. Reorganization of the Board—Election of officers & adoption of rules

Mr. Scarpelli asked for nominations for the position of Chair of the Zoning Board. Mr. Pasquariello nominated Mr. Kearns. Mr. Juhr seconded the nominations. No other nominations were made. All members voted in favor or Mr. Kearns being elected Chair. Mr. Kearns took over running the meeting.

The Chair asked for nominations for Vice Chair. Mr. Juhr nominated Mr. Scarpelli. Mr. Denizard seconded the nomination. No other nominations were made. All members voted in favor of Mr. Scarpelli being elected Vice Chair.

The Chair asked for nominations for Secretary. Mr. Denizard nominated Mr. Juhr. Mr. Juhr declined the nomination. Mr. Juhr nominated Paul Pasquariello. Mr. Scarpelli seconded the nomination. No other nominations were made. All members voted in favor of Mr. Pasquariello being elected Secretary.

The Board held a discussed the decisions made by the Board and who should be responsible for writing them. The Chair gave a bit of history of how it has been done in the past. At one time, the Board would write a list of Findings of Fact and conclusions and give the list to the clerk, who would then prepare a decision. That decision would then be submitted to the Board for final approval. At another time in the Board's history, the Board's attorney would write the decision and findings of fact based on the testimony at the hearing. Over the past year, there have been some differences of opinion on who should be responsible for writing the decisions and the clerk has been preparing them.

The Chair stated that he and some of the other Board members had attended a workshop, Writing Sound Decisions, sponsored by Grow

Smart RI. At this workshop, they were told that in most municipalities the attorney either writes the decisions or has major input in the preparation. Done this way, the decision is much more likely to stand up in court in the event that an appeal is filed. Mr. Savastano replied that he had spoken about this with Town Solicitor Rick Nadeau, who assigns the duties to the Assistant Solicitor. Mr. Savastano was told that writing the decisions for the Zoning Board is not within his scope of responsibility. He has not been given the authority to perform that duty. Under the charter, the Assistant Solicitor's primary work is with the police department. He informed the Board that they would need to take up their question with the Town Solicitor of the Town Council. The Chair stated that he brought up the issue in order to add it to the Board's rules, but that maybe the Board should table it for now in order to get input from the Town Council or Mr. Nadeau. The Board agreed that they would like someone with more legal training in order to make the most sound decisions, but for now they will have to do the best that they can. They agreed to table the discussion and bring it up again at a future date, which was not certain.

4. Application of Gerard and Christine Berthelette, requesting a dimensional variance, per section 5.5.1, Frontage Requirements. Locus is Mendon Road & Middle Street, Plat 3, Lot 286. Zoning: RU-20, Urban Residential.

Attorney Eric Brainsky was present for the applicant. He submitted some handouts that he asked be incorporated into the record. One

was a memorandum, which Mr. Brainsky explained was the same as the one submitted with the application, but with some typos corrected. The new one will substitute for the one previously submitted. He also submitted a plan that was amended after the meeting with the Planning Board. It is a revised Master Plan that was approved by the Planning Board. The only changes are those that were addressed by Town Planner Bob Ericson and the Planning Board.

The Board marked the following exhibits:

- P1) Application for Hearing before Zoning Board of Review, 10/29/10
- P2) Planning Memo, written by Bob Ericson, 12/29/10
- P3) Planning Board minutes from November 18, 2010 meeting
- P4) Memorandum in Support of the Applicant's Request, 1/25/11
- P5) Master Plan, Major Subdivision, Plat 3, Lot 286, October 2010
- P6) 200' Radius Map, Plat 3, Lot 286, October 2010
- P7) Master Plan, Major Subdivision, Plat 3, Lot 286, October 2010, Revised 11/17/10

Mr. Brainsky addressed the Board to present the applicant's request. The applicant is seeking a dimensional variance for frontage requirements. The property is 3.6 acres, which they would like to subdivide into two lots. In an RU-20 zone, there is more than enough land area for the two lots; however, due to the unique shape of the property, one of the lots will have 38.34' of frontage where 100' is required. Most of the developable land sits behind Fountain Street.

There is an existing right of way that would be used for access to the adjacent parcels. Mr. Brainsky stated that when the applicant first hired a surveyor to come up with a conceptual plan, they found that if they ran a road from Mendon Road to Middle Road, they could potentially come up with 5-6 lots, which they could do without need for a frontage variance. Because it is their intention to keep the area rural, they are asking for the frontage variance and the creation of only one new lot.

Mr. Brainsky stated that there will be no new infrastructure, will not significantly increase the density of the neighborhood, and will create an easement for the owners of Lots 170 and 71 to permit them to connect to Town sewers, which they currently have no ability to do. The right of way will also have a 25' radius added in order to give emergency vehicle access. The Fire Department has responded favorably to this. If the variance is granted, the subdivision will have Lot 2 which fully complies with zoning regulations, and Lot 1 which will need a frontage variance due to the unique shape of the lot. The **Planning** Board voted unanimously to send a favorable recommendation to the Zoning Board.

The Chair stated that the standard by which the Board must judge applications that states that "does not result primarily from the desire of the applicant to realize financial gain" always confuses him. He asked for explanation of this statement, as it seems that any enhancement to a property would enable the applicant to realize

financial gain, but that the property owner should also be able to have beneficial use of their property. Mr. Brainsky stated that the court has upheld that a request cannot be denied if the applicant might realize a financial gain. He stated further that if the applicant wanted to realize the greatest financial gain, they would run a road in and divide the property into more than the 2 requested lots. He added that the Board should look not just at the plain language of the ordinance, but in the frame of the application before them.

Mr. Juhr asked when the property was purchased and whether the applicant understood the size and shape of the property at the time of purchase. Mr. Brainsky stated that the applicant purchased the property in 1995 and yes, they understood what they were purchasing. Mr. Juhr asked who owned the access easement. Mr. Brainsky stated that it is the applicant's property, but that the abutting properties are all granted access. Mr. Juhr also asked about a whether the easement information has been added to the deed, referring to the Planning Board minutes. Mr. Brainsky stated that this information has been submitted to the Planning Department.

The Board further discussed what the applicant's hardship is if the variance is not granted. Mr. Brainsky explained that in order to avoid running a road in and creating 2 lots with the current easement, the applicant is faced with the hardship of the unique shape of the lot which does not provide adequate frontage. Surveyor Marc Nyberg was sworn in by the stenographer. The Chair asked for more details

on the initial conceptual plan which involved constructing a road through the property. Mr. Nyberg stated that with his rough conceptual plan, 5-6 potential lots were identified. The Chair asked if they would stay within zoning regulations if the road was constructed and the land subdivided into 4 or more lots. Mr. Nyberg stated that they would be able to create 4-6 lots without variances. In response to Mr. Juhr's request, Mr. Nyberg pointed out on the plan where the road would be and how the 4-6 lots would fit. Mr. Nyberg also reminded the Board that the lots only need 20,000 sq. ft. in the RU-20 zone. Mr. Brainsky referred to the Planning Board minutes and stated that the Planning Board found that the subdivision is not creating the unique condition and if you look at the project as a whole, this plan makes the most sense. He added that the Planning Board much preferred this plan to a 4-6 lot subdivision.

The Chair asked if there were any members of the public present who wished to speak for or against the request. Lucille Blouin was sworn in by the stenographer. She stated that she lives in the adjacent property and occasionally uses the right of way to access the rear of her property. She stated that she is fine with 2 houses, but she would not like 4-6 lots. She also stated that if the subdivision is approved, the current right of way would be much improved.

Thomas Cabral was sworn in by the stenographer. He is also an abutting property owner. He had questions about property lines, ledge in the area and the possibility that construction may pollute his

well. He stated that different surveyors had shown different property lines and he wants to be sure that landscaping that he has maintained for years will not be destroyed by the proposed changes to the right of way. Mr. Nyberg stated that the ledge should not pose a threat to the well, as sewers have been installed in the area with no problems. The Chair asked Mr. Nyberg if they can be sure that when any improvements are made to the road that they will not impinge on Mr. Cabral's property. Mr. Nyberg stated that they will not. Mr. Juhr asked if they would stipulate that only 2 lots will ever be created out of the existing property. Mr. Brainsky agreed to this, stating that the Planning Board will not approve more than 2 lots.

No one else was present to speak about the application. The Chair closed the public hearing.

Mr. Pasquariello made a motion to approve the application following the Planning Board's recommendation. Mr. Scarpelli seconded the motion. The Chair suggested that the conditions that the driveway entrance be modified so as to not encroach on Thomas Cabral's land and that the subdivision not be expanded in any way from its currently proposed 2 lots. Mr. Pasquariello amended his motion to include these conditions. Mr. Scarpelli seconded the amended motion. Roll call vote was as follows: YES: Mr. Kearns, Mr. Scarpelli, Mr. Juhr, Mr. Denizard, Mr. Pasquariello. Motion passed, with a vote of 5-0.

Mr. Scarpelli made a motion to adjourn at 8:09 pm. Mr. Juhr seconded the motion, with all in favor.